

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEWDocket Number (Optional)
108347-00031

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____

Signature _____

Typed or printed
name _____Application Number
10/501336Filed
January 27, 2005First Named Inventor
Pasi LAHTIArt Unit
2139Examiner
Christian LAFORGIA

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

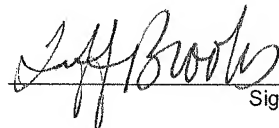
The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☒ attorney or agent of record.Registration number 57,912☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____



Signature

Tiffany J. Brooks

Typed or printed name

202-857-6000

Telephone number

August 19, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:	Confirmation No.: 3649
Pasi LAHTI	Art Unit: 2139
Application No.: 10/501,336	Examiner: Christian LAFORGIA
Filed: January 27, 2005	Attorney Dkt. No.: 108347-00031
For: ANTI-VIRUS PROTECTION AT A NETWORK GATEWAY	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP: AF

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Date: August 19, 2008

Sir:

Applicant requests review of the Final Office Action mailed April 23, 2008, the period for response being extended one month from July 23, 2008 to August 23, 2008 with payment of the appropriate fees. No amendment is being made to the claims currently pending. Claims 1-4 and 6-8 are pending. The Office Action is the third and Final Office Action in this application. Thus, this application qualifies for Appeal.

The Office Action rejects claims 1-4 and 6-8 under 35 U.S.C. § 103(a) as being unpatentable over Tarbotton et al. (U.S. Patent No. 6,757,830) in view of Shipp (U.S. Patent Application Publication No. 2004/0054498). The Applicant submits that the rejection is made in error for at least the reasons set forth below.

I. The Office Action has not Established a *Prima Facie* Case of Obviousness

A. Claims 1-4

The Applicant respectfully submits that the applied references taken alone or in combination fail to disclose or suggest a method of preventing the infection of a computer network by a computer virus, where that virus can spread by e-mail traffic, the method including at least the following features "in the event that a new virus is detected by a provider of the anti-virus application, sending a notification of this event from the provider to the anti-virus application, at the anti-virus application, responding to said notification by discontinuing normal handling of e-mails, wherein discontinuing normal handling of e-mails includes failing to deliver incoming e-mails or their attachments to their recipients within the network and causing these e-mails or attachments to be re-directed to a buffer for safe storage; subsequently generating a signature for the virus at the anti-virus application provider and providing that signature to the application at the gateway; at the gateway, after receiving the signature, using the application to scan the previously buffered e-mails or attachments for the virus, after scanning the buffered e-mails, delivering e-mails or attachments which are virus free to their recipients; and causing the normal handling of e-mails at the e-mail gateway to be resumed," as recited in claim 1.

Although Tarbotton notes that it takes time to react to and generate counter-measures against a new virus, Tarbotton responds by delaying the delivery of e-mails at all times. The delay is determined solely by the risk characteristics of the e-mails and not upon a notification from a provider of anti-virus application. (See column 6, lines 59-67). This delay provides an opportunity for an anti-virus server to update virus signatures to the gateway and increase the chances of identifying infected e-mails.

Thus, e-mails are buffered at the gateway to allow virus alerts to catch up with e-mail delivery.

Shipp fails to cure the deficiency in Tarbotton. Shipp teaches a method of detecting the spread of a previously unknown virus by monitoring patterns of e-mail traffic. Once a suspected virus is detected, the characteristics of infected e-mails are provided to the e-mail gateways. Shipp merely provides an allegedly improved virus "fingerprint." Therefore, Shipp discloses the provision of conventional anti-virus updates rather than advance notification as provided in claim 1.

Thus, the combination of Tarbotton and Shipp would result in the improvement of receiving virus updates not the provision of advance notification updates. E-mails would continue to be buffered at the e-mail gateway for a predetermined time to allow virus alerts to catch up with e-mail delay instead of initiating the buffering of e-mail based upon a notification of a new virus.

The Office Action notes that Tarbotton does not disclose or suggest discontinuing the normal handling of e-mails when notified of a new virus and subsequently resuming the normal handling of e-mails when appropriate countermeasures have been taken, but asserts that this would have been obvious.

As Tarbotton functions by delaying all e-mail where the length of time depends on the individual characteristics of each e-mail, the Office Action's proposed modification that "wherein discontinuing normal handling of e-mails includes failing to deliver incoming e-mails or their attachments and causing these e-mails to be re-directed to a buffer for safe storage" as recited in claim 1 would improperly change the principle of operation in Tarbotton. See MPEP § 2143.01.

For at least this combination of reasons, the Applicant submits that claim 1 is allowable over the cited art. As claim 1 is allowable, the Applicant submits that claims 2-4, which depend from allowable claim 1, are therefore also allowable for at least the above noted reasons and for the additional subject matter recited therein.

B. Claims 6, 7 and 8

The inventions recited in claims 6 and 7 involve a first notification sent by the provider that diverts the flow of e-mail to a buffer and a second notification that causes the gateway to cease preventing delivery of newly received e-mails.

As discussed above, Tarbotton always delays newly received e-mails and Shipp fails to cure the deficiency in Tarbotton. Thus, for reasons similar to those discussed above, the Applicant submits that claims 6 and 7 are allowable over the cited art.

Applicant's invention as set forth in claim 8 is directed to a method of preventing the infection of a computer network by a computer virus, the method comprising in the event that a new virus is detected by the provider of the anti-virus application, calculating a checksum for the file carrying the virus or a relevant part of that file, and sending a notification containing the checksum from the provider to the anti-virus application, and at the anti-virus application, using the checksum to screen e-mails and/or their attachments for the virus until such time as a signature for the virus is received by the e-mail gateway from the application provider.

Tarbotton teaches an e-mail message including a header portion including a checksum value for the e-mail message as a whole as a countermeasure against attempts to falsely insert data indicating that a minimum delay period has already been applied to the message.

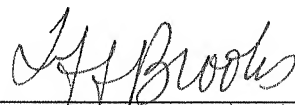
Tarbotton does not disclose or suggest using a checksum to screen e-mails for a virus, as recited in claim 8. Additionally, Tarbotton does not teach a checksum provided by the anti-virus application provider as part of a new virus notification, as recited in claim 8. Furthermore, Tarbotton does not disclose or suggest replacing the use of the checksum from the anti-virus application provider until such time as a signature for the virus is received. As discussed above, Shipp fails to cure the deficiency in Tarbotton.

For at least this combination of reasons, the Applicant submits that claim 8 is allowable over the cited art.

II. Conclusion

For all of the above reasons, a pre-Appeal Brief review of the outstanding Office Action is respectfully requested, and a favorable decision including allowance of all pending claims is earnestly solicited. In the event this paper is not considered to be timely filed, the Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension, together with any additional fees that may be due with respect to this paper, may be charged to counsel's Deposit Account No. 01-2300, **referencing Attorney Dkt. No. 108347-00031.**

Respectfully submitted,



Tiffany J. Brooks
Registration No. 57,912

Customer No. 004372

ARENT FOX LLP

1050 Connecticut Avenue, N.W., Suite 400

Washington, D.C. 20036-5339

Tel: (202) 715-8434

Fax: (202) 638-4810

Enclosure: Notice of Appeal; Petition for Extension of Time

TJB:elp